

United States of America  
IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. **160**

NEIL E. REID, Circuit Judge of the Sixteenth Judicial Circuit,  
sitting in and for the County of Saginaw,  
Petitioner and Defendant Below,

vs.

SECOND NATIONAL BANK AND TRUST COMPANY,  
of Saginaw, Michigan, individually, and as Trustee under  
the Ninth and Tenth Paragraphs of the Will of  
Arthur D. Eddy, Deceased, and  
CHARLOTTE EDDY MORGAN,  
Respondents and Plaintiffs Below

PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF MICHIGAN AND BRIEF IN SUPPORT  
THEREOF

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## SUBJECT INDEX

	Pages
Petition for Writ of Certiorari.....	1-22
(a) Summary Outline of Facts.....	1
(b) Summary of Jurisdictional Questions Involved in Federal Judgment.....	3
(c) Preliminary Discussion of Supreme Court of Michigan's Opinion and Judgment.....	5
(d) Summary Statement of Matters Involved	7
(e) Reasons Relied on for Allowance of Writ	16
Brief in Support of Petition for Writ of Certiorari	23-56
I. Opinion of Supreme Court of Michigan...	23
II. Jurisdiction .....	24
III. Specification of Errors.....	24
IV. Six Main Questions for Decision.....	24
V. Statement of Facts.....	26
VI. Argument on the Law.....	26-56
Part I—Jurisdictional Questions, Arising under Federal Court Judgments, are reviewable .....	26
Part II—Summary of Leading Decisions on the Principal Jurisdictional Questions Involved .....	29
Part III—Chicot District v. Bank, 308 U. S. 371, Distinguished.....	31
Part IV—A Judgment Void for Lack of Jurisdiction of the Subject Matter—may be attacked collaterally in any Court having the parties before it....	33
Part V—Trustee's Counsel Fees.....	35

	Page
Part VI—Summary of Fraud Charges— all admitted by the Trustee's motion to dismiss filed in second suit.....	36
Part VII—Argument on Fraud Charges in procurement of Federal Judgment	38
Part VIII — Discussion of Supreme Court of Michigan's opinion filed February 23, 1943.....	38
Part IX—Conclusion of Brief.....	39
Appendix A—Argument on Fraud Charges in Pro- curement of Federal Judgment.....	43
Appendix B—Discussion of Supreme Court of Mich- igan's opinion filed February 23, 1943.....	51

#### CASE INDEX

Abbott v. Bank, 175 U. S. 409.....	27
Arrowsmith v. Gleason, 129 U. S. 86.....	30
Avery v. Popper, 179 U. S. 305, 314, 315.....	21, 27
Barnell v. Kunkel (8 C. C. A.), 259 Fed. 394.....	30
Barney v. Barney, 216 Mich. 224.....	29
Brachman v. Hyman, 298 Mich. 344.....	44
Brooks v. Hargrave, 179 Mich. 136.....	6, 18, 51
Bruce v. Bruce (5 C. C. A.), 263 Fed. 36.....	30
Bruun v. Hanson, et al., 103 Fed. (2d) 685; Cert. denied 308 U. S. 571.....	30
Bullock v. R. R. Commissioner, 254 U. S. 513.....	27
Byers v. McAuley, 149 U. S. 608, 615.....	3, 6, 17, 39, 40
Chicot District v. Bank, 308 U. S. 371.....	31
Claflin v. Insurance Company, 110 U. S. 81, 95.....	45
Coleman v. Miller, 307 U. S. 433.....	27
Davidson v. Young, 290 Mich. 266.....	14, 20, 35, 44
Donohue v. Vosper, 243 U. S. 59, 64.....	28

	Page
Factor's Company v. Murphy, 111 U. S. 738.....	21
German Society v. Dormitzer, 192 U. S. 125, 127....	21
Gillespie v. Schram, 108 Fed. (2d) 39 (6 C. C. A.) .....	6, 18, 51
<del>Grahl v. Malkenus, 240 Mich. 387.....</del>	50
Gray's Estate, In re, 66 Fed. (2d) 367 (7 C. C. A.)	20
Grover's Estate, In re, 233 Mich. 467, 476.....	53
Grubbs v. Smith, 86 Fed. (2d) 275 (6 C. C. A.); Cert. denied 300 U. S. 658.....	52
Halkes v. Douglass & Lomason Co., 267 Mich. 600...	35
Horn's Estate, In re, 285 Mich. 145.....	53
Indianapolis v. Chase Bank, 314 U. S. 63.....	27, 29
Journal, etc., Co. v. United States, 254 U. S. 581, 584	52
Johnson v. Zerbst, 304 U. S. 458.....	17, 33, 34
Johnson v. Waters, 111 U. S. 640.....	30
Jones v. Harsha, 233 Mich. 409.....	29
Kalb v. Feuerstein, 308 U. S. 433.....	31, 33, 34
Kellean v. Casualty Co., 312 U. S. 377 (Syl. 6).....	28
Marshall v. Holmes, 141 U. S. 589.....	30
Mathews v. Rodgers, 284 U. S. 521.....	28
McNulta v. Lockridge, 141 U. S. 327.....	28
Neibro v. Bethlehem Co., 308 U. S. 165 (Syl. 2).....	17
Princess Lida v. Thompson, 305 U. S. 456.....	
	3, 6, 7, 12, 18, 19, 29, 40
Pusey & Jones Co. v. Hanssen, 261 U. S. 491.....	28
Raniak v. Pokorney, 198 Mich. 567.....	50
Reves v. Hillmer, 256 Mich. 239.....	50
Scott v. McNeal, 154 U. S. 34, 56.....	18
Sprague v. Ticonic Bank, 307 U. S. 161.....	35
Stoll v. Gottlieb, 305 U. S. 165.....	26
Strandt v. Strandt, 278 Mich. 354, 358.....	17, 29, 34
Svitojus v. Kurant, 293 Mich. 291.....	51
Taylor v. Sternberg, 293 U. S. 470 (Syl. 6).....	
	13, 19, 30, 36, 53

	Page
Toucey v. Insurance Company, 314 U. S. 118, 119...	27
Tullock v. Mulvane, 184 U. S. 497.....	28
Tussing v. Trust Co., 34 Fed. (2d) 312 (District Court of Michigan).....	51
U. S. v. Guaranty Co., 309 U. S. 506.....	
	17, 27, 28, 31, 33, 34, 35
U. S. v. Griffin, 303 U. S. 226.....	26
U. S. v. Sherwood, 312 U. S. 584.....	28
Vallely v. Insurance Company, 254 U. S. 348.....	
	6, 17, 31, 33, 34
Van Auken v. Second National Bank, et al., 117 Fed. (2d) 1009 .....	43

**Statutes—**

Title 28, U. S. C. A., See. 344.....	24
Michigan Statutes Annotated, Section 27.3178 (285) .....	53
Constitution of the United States.....	24

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of Saginaw, Michigan, individually, and as Trustee under  
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CHARLOTTE EDDY MORGAN,  
Respondents and Plaintiffs Below

—  
**PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF MICHIGAN**

—  
To: THE HONORABLE HARLAN FISKE STONE, CHIEF JUSTICE  
OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner respectfully shows:

**SUMMARY OUTLINE OF FACTS**

Suit was filed in the Michigan State Equity Court (hereinafter called "first suit") by the testamentary trustee and

against the life tenant (Doebler) and remainderman (Cleveland). A *co-cestui que* trust (Charitable Trust) was not made a party.

Defendant Cleveland then removed first suit to the Federal Court, where an amended complaint was filed by plaintiff Trustee.

No question of jurisdiction was raised.

The Attorney General of Michigan (statutory representative of the Charitable Trust) was not made a party.

Judgment was entered on February 7, 1939 (see Page 9, paragraph I (h) of Summary Statement of Matters Involved) and affirmed without opinion in 117 Fed. (2d) 1009.

Thereafter remainderman filed bill in equity in State Court (hereinafter called "second suit"), asking that the Federal Judgment in first suit be declared void on ground that Federal Court was without jurisdiction. Attorney General was made a party.

Testamentary Trustee then moved to dismiss second suit on ground that judgment in first suit was *res adjudicata*. Motion to dismiss was denied by Petitioner, Neil E. Reid, and an order was entered enjoining testamentary trustee.

Upon petition of testamentary trustee filed in Supreme Court of Michigan (and referred to in its opinion as "instant case") writs of prohibition and mandamus directed to the lower court (Petitioner Reid, Circuit Judge, presiding) were issued by the Supreme Court of Michigan, by a final judgment entered April 20, 1943. It is to review this action of the Michigan Supreme Court that this petition for certiorari is filed.

**SUMMARY OF JURISDICTIONAL QUESTIONS  
INVOLVED IN THE FEDERAL JUDGMENT  
OF FEBRUARY 7, 1939**

**FIRST QUESTION:** Did the Federal Equity Court have jurisdiction of the subject matter to:

- (1) Take from the State Probate Court's prior control, the corpus of the testamentary trust estate over into the Federal Equity Court,
- (2) Allow a Michigan Testamentary Trustee's final account and determine the residue passing to the remaindermen,
- (3) Determine the Testamentary Trustee's Counsel Fees, and require payment from the trust corpus, and
- (4) Then order the residue of the Trust Estate distributed in the Federal Equity Court to the remaindermen—

under a will and testamentary trust being administered since 1925 in the State Probate Court?

This Honorable Court has ruled against such claimed jurisdiction in *Princess Lida v. Thompson*, 305 U. S. 456, 467, and *Byers v. McAuley*, 149 U. S. 608, 615.

That this Federal Judgment of February 7, 1939, actually abstracted an entire trust estate and corpus out of the Michigan Probate Court's thirteen year control—is shown conclusively by the Probate Court's refusal to pass upon a petition for assignment of the residue—giving as a reason that it had lost all jurisdiction because of the Federal Judgment.

See the Probate Order of January 22, 1942 attached as Exhibit A to Petitioner's Answer on page 33, being Pleading B in the Certiorari Record.

SECOND QUESTION: Did the Federal Equity Court have power to enter a judgment against one *cestui que* trust (remainderman Cleveland) that she pay all the expenses of a Testamentary Trustee's final accounting suit—except \$1,000 to be paid by a second *cestui que* trust, a Charitable Trust, which was not a party to the Federal Judgment at all?

(1) These jurisdictional questions were not raised by the parties to the Federal Court Judgment of February 7, 1939, either in the District Court or on appeal.

(2) But to test the validity of the Federal Judgment, Remainderman Cleveland filed an independent bill in equity in the Michigan State Equity Court on January 15, 1942, against the Testamentary Trustee.

(3) Petitioner for Writ of Certiorari, Neil E. Reid, Circuit Judge of the Saginaw Circuit Court, In Chancery, denied the Trustee's motion to dismiss and overruled its claim that the Federal Judgment was *res adjudicata* of this Second State Equity Suit.

(4) Thereupon the Testamentary Trustee (without reviewing petitioner's said order in the usual manner by appeal) filed a petition in the Supreme Court of Michigan on May 13th, 1942 for a Writ of Prohibition against Petitioner Reid.

(5) On February 23, 1943, the Supreme Court of Michigan filed an opinion (See Record, Pleading C) and on April 20, 1943 entered a judgment of prohibition (see Record, Pleading F) the basis of which Supreme Court's opinion and judgment being that Remainderman Cleveland was estopped to question the lack of jurisdiction of the subject matter of the Federal Equity Court to enter the Federal Judgment of February 7, 1939.

(6) This Ruling of Estoppel made by the Supreme Court of Michigan is directly contrary to the Rule of this Honorable Supreme Court of the United States, as announced in the leading case of—

*Valley v. Insurance Company*, 254 U. S. 348.

**PRELIMINARY DISCUSSION OF THE OPINION AND JUDGMENT OF THE SUPREME COURT OF MICHIGAN**

The Highest Michigan Court granted a Writ of Prohibition against Petitioner for Writ of Certiorari, Neil E. Reid, Circuit Judge, forbidding further proceedings in the second suit of *Cleveland v. Second National Bank and Trust Company*, as Trustee (filed to test the validity of the Federal Judgment) on two main grounds, namely:

- (1) That remainderman Cleveland (plaintiff in this second equity suit) *was estopped* to raise the question of lack of jurisdiction of the subject matter, since no party to the Federal Judgment raised the question in the Federal Court "first suit."
- (2) That a Michigan Equity Court had power to construe the last Will of the Testator, which created the trust estate here involved.

This second reason, given by the Supreme Court of Michigan, is of no importance, however, for the Court *did not determine* that the Powers of the Michigan Probate Court were not "adequate" to decide all issues and questions, which the Federal Judgment determined and provided for.

Consequently, the Supreme Court of Michigan *did not decide on the merits* whether a Michigan Equity Court (State or Federal) would have had jurisdiction of the

subject matter to enter the Federal Judgment of February 7, 1939.

The unvarying rule is that as to all matters of administration of all decedents' Estates and Testamentary Trusts—the State Probate Court has exclusive jurisdiction, unless the powers of the Probate Court are "inadequate." *Brooks v. Hargrave*, 179 Mich. 136, and *Gillespie v. Schram*, 108 Fed. (2d) 39 (6 C. C. A.).

Moreover the Testamentary Trustee's amended bill, upon which the Federal Judgment was entered, *tendered only a* testamentary trustee's final accounting, and the question raised was "as to administration and restoration of corpus," as this Honorable Court said in its opinion in *Princess Lida v. Thompson*, 305 U. S. 456 at page 467, holding the Federal Equity Court to be without jurisdiction of the subject matter in that case.

THUS THE SUPREME COURT OF MICHIGAN'S JUDGMENT VIOLATES SEVERAL WELL SETTLED RULES OF THIS HONORABLE COURT IN THAT:

First: Jurisdiction of the subject matter cannot be conferred upon the Federal Court by estoppel or consent (254 U. S. 348).

Second: Distribution of a decedent's estate, in course of administration in the State Probate Court, cannot be made by a Federal District Court (149 U. S. 608).

Third: A State Probate Court's duly appointed Testamentary Trustee's management of the corpus of the Trust cannot be approved by a Federal District Court (305 U. S. 456).

Fourth: Such State Court's Testamentary Trustee's fees and counsel's expenses cannot be approved by a Federal District Court.

Fifth: A Federal Judgment cannot be made *res adjudicata* of the second suit, where claims are made against a charitable trust for contribution of trustee's expenses, which charitable trust was not a party to the Federal Judgment.

Sixth: Any equity court, State or Federal, has the power to set aside any judgment, State or Federal, procured by fraud—and no Highest Court of a State should by writ of prohibition deny a trial on the merits of such charges previously admitted by motion to dismiss—

when the judgment attacked is a Federal Court Judgment.

#### **SUMMARY STATEMENT OF MATTERS INVOLVED**

I. (a) The Equity Complaint filed in the Michigan State Equity Court on January 15th, 1942 (called "Second Suit") challenged the jurisdiction of the Federal District Court to enter its judgment of February 7, 1939, in a Testamentary Trustee's Final Accounting suit in equity—on the ground that the State Probate Court had prior exclusive jurisdiction of the res. See *Princess Lida v. Thompson*, 305 U. S. 456.

(b) The equity suit resulting in this Federal Judgment (called "First Suit") was commenced in the State Equity Court by the Testamentary Trustee—asking a judgment against remainderman legatee, Cleveland, that her legacy was only the par value of her family holding company's shares of \$20,833, whereas their actual appraised value was \$616,000 at the death of remainderman's uncle, the Testator, in 1925.

(c) Remainderman legatee, Cleveland, removed the first suit to the Federal Equity District Court (Eastern District of Michigan, Northern Division).

(d) Thereupon the Testamentary Trustee abandoned this effort (to enter a judgment that the corpus of remainderman Cleveland's one-sixth interest in the estate was only the small par value of \$20,833; see prayer G in the Testamentary Trustee's original complaint in the "first case" in Record Pleading A, page 25), and filed an amended complaint (see Pleading A, Page 41) admitting large losses in the years of 1925 to 1935—during the life estate pendency—and asked exoneration on the ground of the depression.

(e) No party to the Federal Equity "first suit" raised the question of the lack of jurisdiction of the subject matter, of a Federal Equity Court in Michigan to pass upon a State Probate Court's Testamentary trustee's final accounting of its management of the corpus of the trust.

(f) (1) Mr. Eddy's will gave a Charitable Trust one-half of all the shares in the family corporation, these shares being worth \$1,800,000 at testator's death, and remainderman Cleveland was left one-sixth of the company's shares, worth \$616,000.

(2) The Charitable Trust was not a party to the Federal Equity suit (first suit) and the Testamentary Trustee admitted it had lost about \$400,000 of the charitable trust corpus out of a total of \$1,800,000.

(g) Remainderman Cleveland called the attention of the Federal Equity District Court during final hearing that the Attorney General of Michigan was not made a party to the first case—he being by Statute named to represent all charitable trusts in all litigations in the Courts of Michigan.

(h) This failure to have the Charitable Trust represented in the first suit was ignored by the Fed-

eral District Court, which entered a judgment on February 7, 1939:

- (1) That the Trustee had lost nothing of legatee Cleveland's legacy of \$616,000, because the small par value shares of the family corporation were the corpus of the Trust.
- (2) That the Trustee had lost nothing of the Charitable Trust's legacy of about \$1,800,000 of original value of assets of the family corporation, for the same reason, *and notwithstanding that no one was in Court to represent this Charitable Trust.*
- (3) That legatee Cleveland must pay all the Trustee's legal expenses and accounting expenses (except \$1,000 to be paid by the Charitable Trust) because the legatee Cleveland had asked a justification by a Testamentary Trustee of its admitted losses of over \$125,000 of her legacy out of a total appraised value of \$616,000.
- (4) That these attorneys and accounting fees be submitted to the Federal Equity Court for approval and legatee Cleveland's one-sixth legacy be impounded in the Federal Equity Court until such assessed expenses were paid by her.
- (5) That the corpus of the Trust under the Ninth Paragraph of Mr. Eddy's will, which had been within the jurisdiction and control of the State Probate Court ever since 1925 (and annual accountings thereof made to said Probate Court by the Testamentary Trustee for thirteen years) be lifted bodily out of the State Probate Court and into the Federal Equity Court—and administered and distributed under the Federal Equity Judgment of February 7, 1939.

II. In January, 1942, remainderman Cleveland (as Plaintiff in the second suit) filed a bill in equity in the State Saginaw County Circuit Court in Chancery against (1) the Testamentary Trustee, (2) the State of Michigan's Attorney General and the Saginaw County Prosecuting Attorney—appointed by Statute to represent the Charitable Trust—asking

- (a) That the Federal Equity Judgment of February 7, 1939, be declared void as without the jurisdiction of the Federal Equity Court to hold a Testamentary Trustee's final accounting of its management of a decedent's trust estate, and to order a distribution thereof after an assessment by the Equity Court of claimed trustee's counsel fees.
- (b) That the Testamentary Trustee be enjoined from asking approval of its counsel fees by the Federal Equity Court—since the Statutes of Michigan required that all testamentary Trustee's counsel fees be approved by the Probate Court, which appointed such Trustee.
- (c) That if remainderman Cleveland's legacy should and must pay any part of such claimed Trustee's counsel fees—then that proper, equitable contribution thereof might be decreed against the Charitable Trust, since legatee Cleveland's efforts in her own defense were of assistance in protecting the three times as great interests of the Charitable Trust—which Charitable Trust was now a party in Court—for the first time—in this second suit.
- (d) That affirmance of this Federal Judgment of February 7, 1939, was obtained by the fraud and false statements of value of remainderman Cleveland's legacy, made by the Testamentary Trustee to the Sixth Circuit Court of Appeals on oral argu-

ment of her appeal in open court—all of which charges of fraud had been admitted by the Trustee's motion to dismiss filed in this second suit.

III. The Testamentary Trustee moved to dismiss the legatee Cleveland's said second suit bill—on the ground that the Federal Equity Judgment of February 7, 1939, in the first suit was *res adjudicata* of the second suit.

The Lower State Equity Court, Neil E. Reid, Circuit Judge, presiding (petitioner herein for writ of certiorari) denied this motion to dismiss—and issued an injunction against the Testamentary Trustee restraining it from asking approval of its claimed attorneys' fees by said Federal Equity Court or by any Court except the Saginaw Probate Court, which had appointed the Testamentary Trustee.

IV. Thereupon the Testamentary Trustee filed in the Supreme Court of Michigan, on May 13th, 1942 a petition for writs of prohibition and mandamus against said Neil E. Reid (Petitioner for writ of certiorari herein) to prohibit him—

(1) from further proceeding in said second suit to hear and decide the issue of *res adjudicata* by reason of said Federal Equity Judgment of February 7, 1939, in said first suit.

(2) from hearing or deciding on the final hearing on the merits of legatee Cleveland's charges of fraud by said Testamentary Trustee in the procurement and affirmance of said Federal Equity Judgment of February 7, 1939.

(3) and mandamus to compel petitioner herein, Neil E. Reid, to dissolve his temporary injunction restraining the Testamentary Trustee from further

proceeding in the Federal Equity Court under said Federal Judgment of February 7, 1939, for approval of the claimed attorneys' fees of said Testamentary Trustee.

V. After petitioner for Certiorari herein, and defendant in said Michigan Supreme Court Prohibition suit (Neil E. Reid) had enjoined (in said second equity suit) the Testamentary Trustee from attempting to obtain approval of the Trustee's attorneys' fees in the Federal Equity Court under the Federal Judgment of February 7, 1939, in the first suit—said Trustee actually abstracted over \$40,000 from the assets of the family corporation—C. K. Eddy and Sons, and actually paid this money to itself (while it controlled the family corporation's assets) and then this Testamentary Trustee went into the Saginaw Probate Court (which had appointed it as Trustee in 1925) and asked this Probate Court to approve this payment of its counsel fees.

VI. A Chronological history of these attempts of this Testamentary Trustee to obtain heavy counsel fees from *cestui que* trust Cleveland, which the Trustee sued in the first suit in an effort to obtain a judgment that her rights under her Uncle's will were limited to \$20,833 of par value shares (which judgment would have permitted automatically the Trustee to lose her entire surplus of nearly \$600,000 through its mismanagement) is as follows:

1st—The Trustee went into the State Probate Court and obtained part allowance and approval of these counsel fees—namely, \$1,500 in January, 1939, in one of its Trustee's accounts—thus placing the subject matter of such claimed Trustee's Counsel fees within the exclusive jurisdiction of the State Probate Court—see 305 U. S. 456, at pages 467 and 468.

2nd—Then the Testimentary Trustee entered the Federal Judgment of February 7, 1939—which attempted to take all the corpus of remainderman Cleveland's trust estate over into the Federal Equity Court—and to give the Federal Equity Court power to determine the claimed counsel fees—contrary to this Honorable Court's decision in *Taylor v. Sternberg*, 293 U. S. 470, syl. 6.

3rd—Thereafter, the Testimentary Trustee again on May 7th, 1942, went into the State Probate Court (see its annual account, dated May 1, 1942, and attached as Exhibit B to petitioner Reid's answer to the petition for Writs of Prohibition and Mandamus, in Record Pleading B, Page 35 thereof) and asked the State Probate Court to approve its abstraction from the Trust Estate Corpus of \$35,000 as payments made of these so-called counsel fees to Messrs. O'Keefe and Grant. Of these payments made by the Trustee, \$6,500 was made to a retired attorney, Mr. Grant, (upwards of eighty years of age) for sitting in the Federal Court on twelve days, and who never asked a question or addressed the Court—and who wrote no brief or argument or memorandum to the Court at any time, as appears by the Record on Appeal in first suit, and filed in the Supreme Court of Michigan in the second suit.

## VII. EFFECT OF FEDERAL JUDGMENT OF FEBRUARY 7, 1939 IN THE FIRST SUIT.

(a) Mr. Eddy's will specifically gave the Testimentary Trustee the power to dissolve the nominal par value share family holding company "and discontinue C. K. Eddy and Sons as a corporation \* \* \*." (Pleading A, page 39, Paragraph 12 of the Will.)

(b) The Testimentary Trustee's pleadings in the Federal Equity first suit prayed specifically that the family corporation (C. K. Eddy and Sons) be dissolved and its assets distributed under the will—one-sixth to residuary legatee Cleveland. See Record, Pleading A, pages 136, 137, 152. This pleading of the Trustee was an election under the will to dissolve the family corporation and distribute its assets among the legatees, which election is permitted by Paragraph 12 of the will, see Pleading A at page 39.

(c) Residuary legatee Cleveland was made a party defendant in this Federal Equity first suit, but the Charitable Trust (given three times as many shares in C. K. Eddy and Sons by Mr. Eddy's will, as was remainderman Cleveland) was not made a party.

(d) The Trustee's amended bill filed in the Federal Equity first suit in March, 1935 (see Pleading A, R. page 41) admitted heavy losses in the years of 1925 to 1935 in legatee Cleveland's one-sixth interest and tendered a testimentary trustee's final (Probate) accounting of its Trustee's management of the trust corpus (namely the itemized assets of the family corporation) and asked the Federal Equity Court to absolve it from a Trustee's liability for such losses, on the ground that a depression had occurred in 1930 to 1935—five years after the testator's death in 1925. See paragraphs 8 and 9 of the amended bill at Record pages 45 and 46, Pleading A.

(e) The legatee Cleveland answered and demanded the Trustee justify such admitted losses—the legatee remainderman Cleveland being so entitled. See *Davidson v. Young*, 290 Mich. 266.

(f) No question as to the Federal Equity Court's jurisdiction or power to hold a Testimentary Trus-

tee's management of trust assets (probate court) final accounting—was raised by any party.

(g) On February 7, 1939—the Lower Federal District Court entered its judgment providing that remainderman Cleveland was entitled to only the one-sixth par value family company shares and not one-sixth of all the separate valuable assets of the family company, appraised at a net value of \$616,000 (for her one-sixth interest) at testator's death in 1925.

Thus— this Federal Equity Judgment of February 7, 1939, deprived legatee Cleveland of her right to control her own one-sixth of the family company's assets—and made her perpetually a minority stockholder in a three stockholder perpetual, charitable trust corporation, controlled by this Testamentary Trustee.

#### VIII. GROUNDS OF SUPREME COURT OF MICHIGAN'S JUDGMENT OF APRIL 20, 1943, IN THE SECOND SUIT, ISSUING WRIT OF PROHIBITION AGAINST PETITIONER FOR CERTIORARI HEREIN, NEIL E. REID.

(1) After oral argument and briefs—the Supreme Court of Michigan granted Writs of Prohibition and Mandamus (in an opinion, Pleading C) based on three reasons:

(a) That legatee Cleveland was estopped in the second suit to claim that the Federal Equity Judgment of February 7, 1939 in the first suit was void as without the jurisdiction of the subject matter of a Federal Equity Court.

(b) That it was thus unnecessary to pass on the Trustee's plea in the second suit of *res adjudicata* of the Federal Judgment of February 7, 1939.

(c) That although it had always been the unvarying Rule in Michigan that a Court of Equity had no jurisdiction over a Decedent's Estate or Will unless the power of the Probate Court was "inadequate," it was not necessary to decide the question of "adequate" jurisdiction and power of the Probate Court—because the remainderman Cleveland *was estopped* by her participation in the Federal Equity first suit and judgment of February 7, 1939 (as a party defendant) to question its validity for claimed lack of jurisdiction of the subject matter.

Upon such reasoning, the Supreme Court of Michigan based its judgment of April 20, 1943, and the issuance of the Writ of Prohibition against Petitioner for Writ of Certiorari—and review of which final judgment is sought in this Honorable Court.

#### **REASONS RELIED ON FOR ALLOWANCE OF WRIT**

I. The Supreme Court of Michigan confused and misapplied the issues in legatee Cleveland's second suit to test the validity of the Federal Judgment in the first suit for total lack of jurisdiction of the subject matter of a Testamentary Trustee's Probate accounting of its management of the Trust Estate Corpus—and mistakenly ruled that the Federal Equity Court had acquired jurisdiction, because legatee Cleveland was estopped in the second suit to raise the question of lack of jurisdiction of the subject matter.

And on this question of the lack of jurisdiction of the Federal District Equity Court, the positive rule of this Honorable Supreme Court as announced in *United States*

*v. Guaranty Co.*, 309 U. S. 506, was rejected by the Supreme Court of Michigan.

II. The Supreme Court of Michigan in ruling that the Federal Equity Court had the power to allow such Trustee's counsel fees—confused and misapplied this Honorable Court's ruling in *Sprague v. Ticonic Bank*, 307 U. S. 161, and mistakenly applied it as though the Trust Estate in the Ticonic case was one created by a will (as in the case at bar) whereas, in the Ticonic case the trust was created by a private agreement, of which only a Court of Equity could have jurisdiction.

III. Jurisdiction of the subject matter cannot be conferred upon a Federal Equity Court either by—

- (a) Estoppel, (b) consent, or (c) the filing by a defendant of a cross claim or bill.
- (a) *Vallely v. Ins. Co.*, 254 U. S. 348.
- (b) *Neirbo v. Bethlehem Co.*, 308 U. S. 165 (Syl. 2).
- (c) *U. S. v. U. S. Guaranty, etc. Co.*, 309 U. S. 506; *Strandt v. Strandt*, 278 Mich. 354, 358.

IV. A judgment void for lack of jurisdiction of the subject matter is subject to collateral attack and is not *res adjudicata* in a subsequent suit.

*U. S. v. U. S. Guaranty, etc. Co.*, 309 U. S. 506.

*Johnson v. Zerbst*, 304 U. S. 458.

*Vallely v. Ins. Co.*, 254 U. S. 348.

V. The Federal Equity Court had no power or jurisdiction to order a distribution of assets of an estate, in the hands of a State Probate Court and its duly appointed Executor or Testamentary Trustee.

*Byers v. McAuley*, 149 U. S. 608.

VI. The Federal Equity Court had no jurisdiction of the subject matter of a Michigan Testamentary Trustee's management of the corpus of the trust during a thirteen year life estate period—especially when the Trustee had been filing annual accounts for years in the State Probate Court.

*Princess Lida v. Thompson*, 305 U. S. 456.

VII. No equity Court in Michigan, State or Federal, had any jurisdiction over any Estate or Will of a Michigan resident decedent—unless the power of the State Probate Court was "inadequate."

*Brooks v. Hargrave*, 179 Mich. 136.

*Gillespie v. Schram*, 108 Fed. (2d) 39 (6 C. C. A.).

In that connection, the finding of petitioner Circuit Judge in his answer to the petition for Writs of Prohibition and Mandamus—(Finding Sixth (1st) Pleading B, page 7—

"1st—That all determinations and provisions of the said 'Federal Judgment' of February 7, 1939, were within the adequate and full jurisdiction and power of the Probate Court for the County of Saginaw, in the matter of the Estate of Arthur D. Eddy, Deceased, to have decided, determined and provided for."

is conclusive—not having been questioned or issue taken by the Petitioners for Prohibition and Mandamus.

VIII. The Federal Equity Court's judgment of February 7, 1939 (being void as without the jurisdiction of the subject matter) violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

*Scott v. McNeal*, 154 U. S. 34, 46.

IX. The Federal Equity Court's Judgment of February 7, 1939 (being void as without the jurisdiction of the subject matter) violates the due process of law clause of the Fifth Amendment to the Constitution of the United States, the judgment having been entered under the authority of the United States, and the Fifth Amendment being a restraint upon the judicial power of the United States.

X. The Statutes of Michigan expressly require that all Testamentary Trustees obtain approval of the Michigan Probate Court (appointing them) of all allowances of attorneys or counsel fees.

The Testamentary Trustee has gone into the Probate Court (which appointed it in 1925) in January, 1939—and obtained an allowance of \$1,500 of its attorneys fees in this very litigation made the subject of the Federal Equity Judgment of February 7, 1939.

Thereby the Testamentary Trustee had submitted itself on this question of counsel fees allowance to the Michigan Probate Court, and the Federal Equity Court, insofar as it took (by its judgment) the corpus of the Testamentary Trust out of the Probate Court—and undertook to, itself, allow a Testamentary Trustee its attorneys fees—is invalid (*Princess Lida v. Thompson*, 305 U. S. 456).

XI. Legatee Cleveland, made a defendant in a Testamentary Trustee's final accounting suit, had the right (regardless of the Trustee's prior submission of the question to the Probate Court) to have any assessments of attorneys' fees made by the Probate Court, which appointed the Trustee in 1925, and not by either a State or Federal Equity Court (*Taylor v. Sternberg*, 293 U. S. 470).

XII. The Plaintiff Cleveland (legatee, under her Uncle's will of one-sixth of his estate) was made a de-

fendant in the Testamentary Trustee's first suit, commenced in the State Equity Court in 1934, and removed to the Federal Equity Court on the ground of diversity of citizenship (*Re Gray's Estate*, 66 Fed. (2d) 367, 7 C. C. A.).

(a) Despite the Testamentary Trustee's admission (in its amended bill) of heavy losses, which *cestui que* trust Cleveland (as a defendant) had the right to require the Trustee to justify (*Davidson v. Young*, 290 Mich. 266),

the Federal Equity Court entered judgment on February 7, 1939, requiring *cestui que* trust Cleveland to pay all the Trustee's legal expenses and costs except \$1,000—which the Federal Judgment required the Charitable Trust to pay.

(b) But the Charitable Trust was not a party to the Federal Judgment and not bound by it.

(c) Now the Testamentary Trustee has taken over \$40,000 from the corpus of legatee Cleveland's one-sixth interest—but

(d) *The judgment* of the Michigan Supreme Court of April 20, 1943, absolutely prohibits legatee Cleveland from even asking contribution from the Charitable Trustee of its share of such expenses—in the second suit started by legatee Cleveland in January, 1942, against the Charitable Trust—where it was for the first time a party.

Such Writ of Prohibition amounts to a deprivation of legatee Cleveland's property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States.

XIII. The Federal Equity Judgment of February 7, 1939, denied to legatee Cleveland—

1—her right under the will to a distribution of one-sixth of the assets of the family company—

2—her right to have any claimed Trustee's fees or expenses allowed by the proper State Probate Court having jurisdiction thereof.

3—her right to submit the question to a Court of competent jurisdiction—whether the Charitable Trust, upon established principles, should contribute a part (more than \$1,000) of the Trustee's so-called attorneys' fees and accounting expenses.

Thereby legatee Cleveland was deprived of an "immunity" existing under Federal authority—and subsequently the validity of this Federal Judgment was drawn in question by the judgment of the Michigan Supreme Court of April 20, 1943, which issued a Writ of Prohibition against this petitioner, Reid, and which judgment of the Highest Court of Michigan this petitioner for certiorari is fairly entitled to review (*Avery v. Popper*, 179 U. S. 305, 314, 315) in this Honorable Court.

XIV. The Supreme Court of Michigan directly passed upon a Federal Question by determining that the Federal Judgment of February 7, 1939, was valid—it being an issue of the validity of an authority of the United States (*Factor's Company v. Murphy*, 111 U. S. 738).

XV. The invalidity of a Federal Judgment (for want of jurisdiction) was in issue when the Supreme Court of Michigan treated it as in issue, and thus a Federal Question was presented, reviewable by this Honorable Supreme Court (*German Society v. Dormitzer*, 192 U. S. 125, 127).

WHEREFORE, your Petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of Michigan, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its Docket,

No. 42,067

SECOND NATIONAL BANK & TRUST COMPANY of Saginaw, Michigan, a National Banking Corporation, individually and as trustee under the Ninth and Tenth Paragraphs of the Will of  
Arthur D. Eddy, deceased, and  
CHARLOTTE EDDY MORGAN,  
Plaintiffs,

vs.

HONORABLE NEIL E. REID, Circuit Judge of  
the Sixteenth Judicial Circuit, sitting in and  
for the County of Saginaw,  
Defendant

to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States; and that the Judgment of April 20, 1943, therein of said Supreme Court of Michigan be reviewed by this Court and for such other and further relief as this Court may deem proper.

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Writ of Certiorari.*

